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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

HON. JONATHAN J.C. GREY

v.

No. 22-20504

AWS MOHAMMED NASER,

Defendant.

MOTION HEARING - SEALED RECORD

BEFORE UNITED STATES DISTRICT JUDGE JONATHAN J.C. GREY

Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan

**Monday, June 5, 2023
3:10 p.m.**

APPEARANCES:

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(Appearances continued)

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June 5, 2023

Detroit, Michigan

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(Court, Counsel and Defendant present; 3:10 p.m.)

THE COURT CLERK: All rise. The United States District Court for the Eastern District of Michigan is now in session; the Honorable Jonathan J.C. Grey presiding. You may be seated.

The Court now calls Case Number 22-CR-20601, United States of America versus Aws Mohammed Naser.

Will counsel please place their appearances for the record starting with the government.

MS. MOHSIN: Yes. Good afternoon, Your Honor. I believe the Case Number is 22-20504?

THE COURT CLERK: That's correct. That's correct.

MS. MOHSIN: Just making sure.

Saima Mohsin, Assistant United States Attorney, appearing on behalf of the United States. To my right is Dmitriy Slavin. He is a trial attorney with the Department of Justice's National Security Division.

THE COURT: Good afternoon.

MR. SLAVIN: Good afternoon, Your Honor.

THE COURT: Thank you.

MR. GEROMETTA: James Gerometta and Amanda Bashi on behalf of Aws Naser who is present to my left, Your Honor.

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1 THE COURT: Good afternoon to you all as well.

2 MS. BASHI: Good afternoon.

3 THE COURT: Thank you. And I just want to say thank
4 you to counsel and all parties for their patience today. The
5 Court was delayed due to another court matter, but I appreciate
6 counsel for standing by and being prepared to proceed.

7 And so this is a hearing on the government's motion to
8 amend the existing protective order, and you all may be seated.
9 And so I have received the -- both the motion, the response, as
10 well as the reply from the United States in the latter
11 instance, but if there are additional items that you would like
12 to present at argument, you may.

13 MR. GEROMETTA: Your Honor, before we start, Mr. Naser
14 asked me to put something on record, and I thought I'd do it
15 now before the government gets going if it's okay with the
16 Court.

17 MR. SLAVIN: Okay.

18 MR. GEROMETTA: Thank you. My apologies.

19 Your Honor, Mr. Naser has some concerns in this case,
20 and we went over this a little bit last time. We were talking
21 about scheduling, and I think it will come up when we talk
22 about whether this should be a complex case or not, but this is
23 a case where Mr. Naser is five years into a parole violation at
24 the Michigan Department of Corrections. He was brought over on
25 a writ which interrupted his programming there, and he hasn't

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1 been able to finish that programming. He's been here for about
2 seven or eight months now. And he's concerned about that. The
3 interstate agreement against detainers gives a presumptive
4 six-months timeframe to try cases. That might be 120 days,
5 Your Honor. I can double check that. But regardless, we are
6 over that presumptive timeframe when he's brought over on a
7 writ.

8 And, again, this goes to the government's request for
9 a complex case designation. In the time he's been here we've
10 received some discovery. There's more discovery waiting. We
11 just, Miss Bashi and I, looked at some more discovery that
12 hasn't been released pending the resolution of the protective
13 order. There have been two judicial recusals in this case,
14 which is extraordinary, as I'm sure everyone in this court
15 agrees with. It's unusual to get one, much less two.

16 And Mr. Naser has some real concerns about the pace of
17 this case. He's asked me to reiterate his rights under the
18 interstate agreement on detainers, that there really hasn't
19 been a sufficient finding in this case, that it should -- the
20 120-day timeframe should be exceeded. We still don't have full
21 discovery. To the extent that there have been these recusals
22 and there have been judges familiar with the cases who set some
23 aggressive -- you know, Judge Borman in particular had set a
24 more aggressive timeline in this case. Mr. Naser has asked me
25 to indicate he would waive whatever conflict there was that

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1 caused -- you know, the last recusal was by Judge Hood, so I
2 guess that's the one I'll address, that would cause Judge Hood
3 to recuse herself. For the record, he is reasserting his IAD
4 rights.

5 THE COURT: Wait. Just so I understand, you're saying
6 he would waive whatever issue caused recusal?

7 MR. GEROMETTA: He would, Your Honor, yes.

8 THE COURT: Well, we don't know what caused the
9 recusal, so there may not necessarily be anything for him to
10 waive. And once the recusal is done, I have no way of knowing
11 what happened or why. I know that the case is mine.

12 MR. GEROMETTA: I understand that, Your Honor. Much
13 like the upcoming FISA litigation where I'm shooting in the
14 dark a little bit, I'm shooting in the dark here too. And, you
15 know, I can understand Mr. Naser's concerns and why he's
16 frustrated by this entire thing.

17 THE COURT: Just so I understand, Mr. Gerometta, are
18 you making a motion?

19 MR. GEROMETTA: I guess -- so this -- Mr. Naser and I
20 discussed this this afternoon before we came up. You know, I'm
21 not sure there is a mechanism to make a motion, to waive the
22 recusal, to waive -- I don't know if there was a conflict and
23 we were asked to waive it, we could waive it, but when we don't
24 know the reason for the recusal, it's hard to make a motion
25 when I don't know that reason.

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1 THE COURT: Okay.

2 MR. GEROMETTA: And I'm not even sure how to
3 investigate that reason.

4 THE COURT: And I don't think that there is a
5 mechanism to investigate the reason for another judge making --
6 deciding to recuse themselves from the case. So separate and
7 apart from that, the IAD issue, are you making a motion regards
8 to that? And just to specify for purposes of the record, part
9 of your concern is that Mr. Naser is not in state custody, he's
10 been brought over to federal custody and that time has been
11 extended repeatedly. And so your concern is that he's missing
12 out on programming that he had begun in state custody. Is that
13 correct?

14 MR. GEROMETTA: Yes, Your Honor. Because it puts him
15 in a really difficult position to either stay here and work
16 with us, to expedite this case, or to go back and get that
17 state programming. And if I could have one moment, please,
18 Your Honor.

19 THE COURT: You may.

20 (Attorney/client conference.)

21 MR. GEROMETTA: So, Your Honor, he's in a -- he's got
22 a difficult choice, really impossible choice, to return there
23 and get programming or to stay here and really assist us in
24 preparing for trial, and I think that's a choice -- that's what
25 the IAD is meant to avoid with that 120-day maximum. And

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1 because of that, I would make an oral motion to dismiss based
2 on IAD violation. I understand the Court may want me to
3 supplement or to file an official written motion, but I raise
4 that issue now before we get started on everything.

5 THE COURT: Thank you.

6 MR. GEROMETTA: Thank you.

7 THE COURT: Counsel, would you like to respond? And
8 I'll just direct you -- I don't need a response regarding
9 recusal.

10 MS. MOHSIN: Thank you, Your Honor.

11 I just want to acknowledge for the record that the
12 government agrees; it is extraordinary for one, let alone two,
13 judges to recuse themselves. We don't have any idea why that
14 occurred.

15 As far as the IADA is concerned, the defendant waived
16 his IADA rights, then he withdrew that waiver, the government
17 was asked not to return him to state custody. We have honored
18 that request. We will return him to state custody should he
19 have any reason to do so or if he requests that. But as far as
20 the government is concerned, there has been no violation of his
21 speedy trial rights here either under the Speedy Trial Act or
22 constitutionally.

23 As the Court is aware, a motion for complex case
24 designation was filed in this case sometime ago. That motion
25 is still pending, as is the government's motion for amending

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1 the protective order.

2 So I don't believe that there is any sig -- any time
3 that has been charged to the government with respect to speedy
4 trial at this point because we have been in some sort of motion
5 practice pretty much from the inception of the case.

6 THE COURT: Thank you.

7 I believe that that is an accurate statement of the
8 law, and so on that basis I'm going to deny the motion. You
9 certainly have leave, Mr. Gerometta, if you deem it reasonable
10 and warranted, to file a motion, and the Court will address a
11 written motion. And I'll just state, Miss Mohsin actually very
12 clearly said if -- having a little bit of brain fog here -- if
13 Mr. Naser wants to go back to state custody, that the
14 government is happy to have him go back to state custody. So
15 there may not be any opposition to that. I would just urge you
16 consult and confer with counsel for the United States.

17 So we will move on to the purpose of today's hearing
18 which is the motion to amend the protective order. And
19 Miss Mohsin or Mr. Slavin, you may approach the lectern.

20 MR. SLAVIN: Thank you, Your Honor. That is loud.

21 When we began this case, we talked with the defense
22 about the need for a protective order, and counsel on both
23 sides agreed to a stipulated protective order. Judge Borman
24 found good cause to enter into this protective order, and it
25 was entered back in the fall. Actually in December, early

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1 December.

2 Soon after that, Mr. Naser began having phone calls
3 with a journalist who, in the past, has done a podcast that
4 featured a lot of information from Mr. Naser. In fact, almost
5 the entire episode of this podcast was dedicated to Mr. Naser
6 and the things that he had told him. The journalist told
7 Mr. Naser in their conversations that he had read the
8 protective order, that it was not a violation of the protective
9 order for Mr. Naser to summarize the information in his
10 discovery and provide that information to the reporter. They
11 agreed to have his brother provide some of the discovery
12 information. The journalist tasked Mr. Naser with looking at
13 the discovery to get him certain things, and they discussed
14 doing a documentary on Mr. Naser's case, on the investigation,
15 with the goal of shining a light on the work the FBI does on
16 terrorism cases and what they consider to be improper ways that
17 the FBI pursues terrorism cases.

18 THE COURT: Mr. Slavin, have you identified specific
19 minutes and seconds in Exhibits 3 and 4 that you submitted to
20 the Court that specifically would show he was distributing
21 information in violation of the December 12th, 2022, protective
22 order?

23 MR. SLAVIN: So he was not -- having reviewed the
24 language of the protective order, what he was distributing was
25 marked as general discovery. In -- which that specific

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1 document, talking about one specific document, that was a
2 sealed record from another court regarding a sealed case. We
3 should have marked that as sensitive because it was sealed.

4 THE COURT: But you didn't.

5 MR. SLAVIN: We did not. So he did not improperly
6 distribute this information, which is a problem in itself
7 because it shows that the protective order is not sufficient to
8 cover the issues in this case. Because information that is
9 general discovery which is still concerning this case, there's
10 no limit on him sharing that information with the media, and he
11 has made it his mission to share that information with the
12 media.

13 He has refused to sign any protective order, and so we
14 are certainly concerned that anything even more sensitive that
15 he sees is going to end up in the media.

16 THE COURT: And specifically about his refusal to sign
17 a protective order, what would you have the Court do if he
18 continues to refuse to sign an agreement regarding
19 nondisclosure of materials?

20 MR. SLAVIN: So what we had proposed is an amended
21 protective order. That amended protective order limits his
22 access to even the general discovery; that would require him
23 to, first, sign a protective order in order to view it and then
24 to only view it in the presence of his attorneys so he does not
25 have the ability to publicize it and share with the media.

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1 THE COURT: So if he doesn't sign, what would you like
2 the Court to do?

3 MR. SLAVIN: To enter this protective order where his
4 attorneys would have access to all of the discovery but he
5 would not himself be able to actually get his hands on the
6 documents.

7 THE COURT: And specifically regarding the April 7,
8 2023, call, do you have a copy of that for the Court?

9 MR. SLAVIN: We do, and we can submit the entire call
10 for the Court. All the calls are recorded, so we could provide
11 recordings of each of these phone calls to the Court.

12 THE COURT: I do think that that would be helpful, and
13 for that reason I may not be making a decision on this motion
14 today.

15 MR. SLAVIN: Understood.

16 THE COURT: You may proceed if you have anything that
17 you'd like to illuminate for the Court.

18 MR. SLAVIN: Our focus is on both protecting future
19 investigations and any current investigations going on but also
20 ensuring that both sides get a fair trial in this case.

21 Some of the discovery is going to be inadmissible, as
22 is always the case, but if it's out there in the public because
23 it's shared in the media, then the potential jury pool could be
24 tainted with this information being out there. This is a --
25 the journalist that he's been in contact with constantly has

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1 done multiple podcasts focusing on FBI investigations. He
2 himself has thousands of listeners, but he's also been featured
3 on many other podcasts talking about law enforcement. He's a
4 frequent guest. He's often quoted and sent in articles. So he
5 has a lot of reach and a lot of ability to publicize this case.
6 And we're not asking for, you know, any kind of restriction on
7 the media, but as, in fact, they say on their phone calls, if
8 there's documents that make their way to the media, that gives
9 a lot more credibility. That gives a lot more oomph to
10 anything that they choose to put out, and it's things we may
11 not be able to address at trial because it may be inadmissible,
12 it may be hearsay, it may have to do with other cases and
13 things that would not be relevant or appropriate to bring up at
14 trial but the jury may already know if it's been widely
15 publicized in the media.

16 So that is a concern for us, ensuring that we don't
17 have a tainted jury pool but also protecting terrorism
18 investigations. The discovery material is going to show not
19 just what -- things that Mr. Naser already knew but also how
20 the government knows those things. So that's going to reveal
21 potential surveillance, that's going to, you know, reveal the
22 use of any sources, and that endangers ongoing as well as
23 potential future investigations. So those are our two concerns
24 in this case: fair trial and protecting investigations.

25 THE COURT: Thank you. And the Court is certainly

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1 sensitive to those concerns. The balance is against the right
2 of access and certainly right of access for a defendant. And
3 so I'm going to weigh, continue to weigh this request very
4 carefully. But thank you.

5 MR. SLAVIN: Thank you, Your Honor.

6 THE COURT: Mr. Gerometta?

7 MR. GEROMETTA: Thank you.

8 So, Your Honor, the government raises two concerns in
9 its request for an expanded protective order, and I'm going to
10 separate them because I think they're two very different
11 concerns that have two very different remedies. The first is
12 the idea of the FBI's sources and means, I'll call them, the
13 need to protect ongoing and perhaps --

14 THE COURT: Just try not to touch the base of the
15 microphone.

16 MR. GEROMETTA: I'm sorry.

17 THE COURT: Or the mic at all. That one is sensitive.

18 MR. GEROMETTA: I apologize. I nudged it with my
19 paper.

20 THE COURT: No problem. It's very sensitive. Please
21 continue.

22 MR. GEROMETTA: So I'll call it the sources and
23 methods being the first concern. And I think that's the
24 legitimate concern for a protective order here. And the
25 original protective order was designed to separate discovery

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1 that would reveal sources and methods and discovery that --
2 that wouldn't reveal those sources and methods. Discovery that
3 wouldn't reveal that sort of thing was made general discovery,
4 and discovery that would potentially reveal sources and methods
5 was made sensitive discovery.

6 Now, it's my personal opinion that the government has
7 overused what should be in sensitive discovery. You know,
8 looking at what's in the sensitive discovery, we have
9 defendant's bank records, defendant's credit report, a subpoena
10 to Bank of America, subpoena for Western Union and response,
11 these sorts of things. Now, the fact that the government
12 subpoenas Bank of America, I guess, is a method of
13 investigation, but I don't really think it's a sort of -- I
14 think I'm just shaking this.

15 THE COURT: It's okay.

16 MR. GEROMETTA: I don't think it's a sort of method of
17 investigation that needs to be protected. I don't think anyone
18 can or will do anything different or will be surprised to find
19 out that law enforcement uses investigative subpoenas to get
20 people's bank records or Western Union records. I don't
21 understand why that is sensitive discovery.

22 But that aside, there are some things and there is
23 some information in here regarding search warrant affidavits
24 and that sort of thing that do in part, I will admit, talk
25 about sensitive sources and methods. And those things, I

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1 think, are appropriately under a protective order to stop them
2 from being disseminated out into the world and interfering with
3 ongoing or future investigations. And that's what the purpose
4 of a protective order is.

5 The other thing that the government is concerned about
6 is they're concerned about taint of the jury pool, and I don't
7 think that's an appropriate use of a protective order. When
8 you're talking about tainting the jury pool, what you're
9 actually talking about is a gag order. If you're talking about
10 a gag order, the standard for that is, you know, is somebody
11 going to be making statements that they believe are going to be
12 published by the media that will influence the jury pool.

13 THE COURT: Well, they've said yes.

14 MR. GEROMETTA: Well, Your Honor, they've said that in
15 the past Mr. Aaronson has had podcasts and these sorts of
16 things that talk about what he believes is the manufacturing of
17 terrorism by the FBI, and they said he has thousands of
18 listeners and he's sometimes associated with other media, but
19 what they haven't pointed to is any sort of overwhelming press,
20 overwhelming deluge of information into this particular jury
21 pool that would make it impossible to select a jury.

22 THE COURT: And their view is that this is why they're
23 requesting it, so it doesn't get to that point.

24 MR. GEROMETTA: Well, Your Honor, I think they need to
25 show there's a possibility of it getting to that point, and I

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1 don't see that at all. First of all, Mr. Aaronson and
2 Mr. Naser are talking about doing a documentary about his life
3 and his experience, and that's totally appropriate. There's
4 been no talk about when that documentary is going to be
5 published. You know, they're also talking about generally the
6 things that the FBI does to -- which in their belief
7 manufacturers terrorism which unfairly targets Muslims. And I
8 think this is something, while Mr. Naser is going through this
9 case, that he has a First Amendment right to talk about. He
10 even has a First Amendment right to talk about it in
11 relationship to his case unless it's going to poison the jury
12 pool, that it's going to make it impossible to pick a fair and
13 impartial jury.

14 It's -- someone who's got a podcast with thousands of
15 listeners across the country I don't think so overwhelms this
16 jury pool that we can't through the voir dire exclude the two
17 people out of the 70 that we're going to bring in who may or
18 may not have heard of this case. And when I say the two
19 people, I think I'm being generous to how many people on our
20 jury pool are going to have listened to Mr. Aaronson's podcast.

21 You know, I just tried a terrorism case with someone
22 who was arrested in Syria and brought back here. No one on our
23 jury had heard of him. I mean these are sensational
24 allegations. No one had heard of him. Now, that doesn't mean
25 that you should never be worried about pretrial publicity in

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1 this case, but I just don't see it here at this time. And it
2 certainly should not be addressed through a protective order.
3 It should be addressed through a gag order, and the government
4 has not moved for a gag order in this case. I think the
5 protective order is the wrong mechanism.

6 Their protective order means that Mr. Naser can't have
7 his discovery and go through it and look at it. That means
8 either myself or Miss Bashi or an investigator from my office
9 has to sit with him and go through it, that he can't look at
10 it -- and I don't want to say at his leisure because that's the
11 wrong, really, term. Makes it sound relaxed. But as I'm sure
12 the Court knows from being back in practice, when you prepare
13 for a case, you don't look at stuff one time, and it doesn't
14 always make sense. You look at stuff and something hits you
15 and you go back, pull your binder --

16 THE COURT: I do the same. I do the same now.

17 MR. GEROMETTA: Okay. So, you know, it's not all this
18 one time through or two times through or you go through it in
19 order. It takes a long time.

20 THE COURT: Let me --

21 MR. GEROMETTA: He's going to lose that ability.

22 THE COURT: Let me ask you this though, because I know
23 you're talking about the publicity and the limiting effect it
24 might have if this amended request is granted, but he hasn't
25 signed the agreement not to disclose materials that were

1 already subject to the 2022 protective order. Why has he not
2 signed that agreement?

3 MR. GEROMETTA: Your Honor, he hasn't signed that
4 agreement for two reasons. Number one is he feels that it's
5 being interpreted overbroad by the government, which is I think
6 something that we -- if we believe that have an affirmative
7 duty to litigate, to ask things be removed from the protective
8 order, first thing we should do is talk to the government about
9 it obviously before we come to the Court. I'm sure the Court
10 does not want to get back into handling discovery disputes now
11 that it's left a lot of that behind. But, you know, I think
12 that's one reason, and the other reason is because of this idea
13 that now everything's going to be under the protective order.
14 We neglected to have him sign it. That was, you know, my
15 fault. But and then when we talked to him about it, we had
16 already gone to the idea that maybe everything was going to be
17 under the protective order and he drew the line there.

18 So I think what the Court could do, what I'd like the
19 Court to do is to keep the current protective order and just
20 say, Mr. Naser, until you sign that protective order, you're
21 just going to get the general discovery, and there's another
22 batch of discovery to be delivered and it contains a fair
23 amount of protected discovery but a lot of general discovery
24 for him to go through.

25 THE COURT: And is it your contention that he is going

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1 to sign the agreement?

2 MR. GEROMETTA: Well, Your Honor, I would like to have
3 some more time to sit down and talk to him about it, but I'd
4 also like him to start going through the rest of the general
5 discovery at this time so that we can -- there's now general
6 discovery to keep him busy for a while, so that we can get this
7 case moving forward.

8 THE COURT: And I'll just tell you, I think that this
9 is slightly far afield from the motion, but I've heard you
10 express a concern about the timing of this case and potential
11 delays in going to trial, but Mr. Naser not sitting with you
12 and reviewing the discovery could harm his ability to prepare
13 for trial in a timely and an efficient way. So I'm also
14 thinking about that, that he may be delaying his own trial.

15 MR. GEROMETTA: I understand that, Your Honor, and I
16 think if we could get -- if the Court would keep the protective
17 order status quo, for lack of a better word --

18 THE COURT: And just hope that he would sign the
19 agreement?

20 MR. GEROMETTA: Your Honor, if I sit down with him and
21 we go through much of the general discovery in the next week or
22 two, I would hope that he would at that point with a little
23 more time, with he and I, sign the protective order at that
24 point. And if not, you know, it is -- the Court asked what the
25 government, what are they supposed to do if he just refuses to

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1 sign a protective order, and that I don't have an answer for.
2 And that's -- and I think as his attorney, I just need to sit
3 with him and tell him, look, we've got to get this but part of
4 that is going through the rest of the discovery and building
5 some trust between Mr. Naser and I which is, as I'm sure the
6 Court's aware, an ongoing business.

7 THE COURT: Well, I can tell you that the Court would
8 certainly not be inclined to order the government to produce
9 sensitive materials specifically for his review if he won't
10 even sign this agreement.

11 MR. GEROMETTA: I understand that, Your Honor, and
12 that's why at this time I'm not requesting that.

13 THE DEFENDANT: Come here.

14 MR. GEROMETTA: Could I have one moment, please?
15 (Attorney/client conference.)

16 MR. GEROMETTA: Thank you, Your Honor.

17 You know, as far as the delay goes, I know the Court
18 was -- I promise I'm not touching this. As far as the Court --
19 the delay goes, as I'm sure the Court knows, we're eight months
20 in and the delay is one of Mr. Naser's, you know, big issues.
21 If we could get this general discovery, you know, I'm confident
22 when we take a look at everything that we will work out the
23 sensitive discovery portion and get this case moving and the
24 delay in this case will not be Mr. Naser's fault, that before
25 we're through the general discovery, we'll work out the

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1 sensitive discovery issue.

2 THE COURT: Well, I'll just say on the record, it
3 doesn't appear that Mr. Naser's ready for trial if trial were
4 to be ordered right now within a short period of time. Even
5 with what's been produced, he hasn't gone through it, so I'm
6 just, again, noting that.

7 MR. GEROMETTA: Your Honor, we have been through
8 everything that's been disclosed to Mr. Naser. There's a -- we
9 haven't been through the last batch which hasn't been
10 disclosed. It's been disclosed to us at the U.S. Attorneys'
11 Office, but it hasn't been given to us. When he gets it, he's
12 very diligent and we have staffed this case to move it as quick
13 as possible.

14 THE COURT: Thank you.

15 MR. GEROMETTA: Thank you, Your Honor.

16 THE COURT: Mr. Slavin, this is your motion, and so
17 you'll have the last word if there are any other matters you'd
18 like to bring to the Court's attention having heard
19 Mr. Gerometta's response to your argument.

20 MR. SLAVIN: Thank you, Your Honor. I just want to
21 respond to one thing which is the question of the proper
22 remedy. And the defense suggests that for the pretrial
23 publicity concern the proper remedy would be a gag order. We
24 don't want to go that far. We want to respect the defendant's
25 First Amendment rights. We want to respect the media's rights.

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1 And we don't want, even though the Court can -- you know,
2 there's a balancing side that, you know, case law says there's
3 infringements that can be made on that right to protect a
4 trial. We don't want to go any further than is necessary. And
5 that's why we think a protective order is a good solution
6 because if the defendant and this reporter want to complain
7 about the FBI's treatment of Muslims, they're free to do that,
8 but they don't have the ability to say the documents in this
9 case, specifically the discovery documents in this case, the
10 FBI's own documents, say X, Y, and Z and that proves that the
11 FBI's targeting Muslims, because we have no way -- it's going
12 to be a one-sided story. It's going to have that credibility
13 because they'll be able to say documents support it, and we may
14 not be able to counter that because the documents they're
15 talking about may be hearsay, may be inadmissible for other
16 reasons. And so that's our concern.

17 And this case did attract media attention when it was
18 indicted. It was covered by -- it was in AP, CNN, ABC, Fox,
19 all of the major outlets. So that concern is there. And we
20 think rather than any kind of gag order, a protective order
21 that just says you could talk but you're not going to have the
22 ability to say "Let me give you these documents or read from
23 them to you that prove my point" is the right middle ground
24 without infringing on anybody's freedoms.

25 The other thing, the sensitive -- this general

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1 dispute, we are happy to sit down with the defense and hash
2 out, you know, which documents are general, which documents are
3 sensitive without involving the Court. I'm sure that we can
4 reach compromises and reach agreements on those things. But if
5 we're at the point where we know that any document that is
6 marked general discovery is going to immediately be handed over
7 or eventually be handed over to the media, we're going to be
8 extra careful with those documents because they may contain,
9 even if it's bank account information, they may contain bank
10 account information of people other than the defendant.

11 THE COURT: But what would make that any different
12 than a garden variety white collar fraud case that a person
13 could choose to receive their basic documents in discovery and
14 do an interview based upon those documents and share those
15 documents?

16 MR. SLAVIN: In those cases, generally those documents
17 themselves are not being handed over to the media. If they --

18 THE COURT: But they could be.

19 MR. SLAVIN: I think if you -- if I had a white collar
20 case where arose -- where the same issues arose, I would be
21 considering a protective order or at least redacting, you know,
22 bank account information, you know, taking more steps in that
23 discovery as well to protect that information because things
24 like tax information, financial information, bank account
25 numbers, those, you know, while they don't reveal sensitive law

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1 enforcement methods, are still sensitive information that needs
2 to be more carefully dealt with and protected. And so if we
3 think that that information's going to be -- immediately go to
4 media, we're going to be a little more careful in it and we
5 will err -- that's why we have been erring towards, well, let's
6 be careful with this. And we're happy to have those
7 negotiations, but we have a lot more comfort that we're
8 protecting, you know, private information, financial
9 information with a -- if we know that it's not going to be
10 immediately handed over to the media.

11 THE COURT: Thank you.

12 MR. SLAVIN: Thank you, Your Honor.

13 THE COURT: I'm not going to issue a ruling today
14 because I do want to review the other -- I believe it was a
15 call. So as soon as I receive that and review it, the Court
16 will issue an order shortly thereafter.

17 MR. SLAVIN: Your Honor, do you only want the
18 April 7th calls or all of the calls that we mentioned in our
19 motion?

20 THE COURT: The April 7th call.

21 MR. SLAVIN: Understood. Thank you.

22 THE COURT: Thank you.

23 So this matter will remain pending, and I will take it
24 under advisement once I have received the April 7th call. So
25 it remains open until I've received that call.

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1 I will also stay tuned to see if there are further
2 motions filed, and I am aware that the other motion regarding
3 designation of the case remains outstanding. The Court will be
4 issuing an order on that.

5 Is there anything further for the Court's
6 consideration today?

7 MS. MOHSIN: Nothing further from the government at
8 this time. Thank you, Judge.

9 THE COURT: Thank you.

10 Mr. Gerometta?

11 MR. GEROMETTA: Your Honor, I may request the Court
12 listen to one of those other calls, but I want to relisten to
13 it myself before I waste your time asking you to review a
14 second call for context.

15 THE COURT: Okay. If you're going to request the
16 Court listen to it and it's already been mentioned, you can
17 simply just alert the Court --

18 MR. GEROMETTA: Okay.

19 THE COURT: -- and either you or counsel for the
20 government may provide it to the Court.

21 MR. GEROMETTA: Okay. Thank you, Your Honor.

22 THE COURT: Thank you.

23 And I will just direct you to do that no later than
24 one week from today.

25 MR. GEROMETTA: Will do. Thank you.

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1 THE COURT: Thank you.

2 That will be all for purposes of today's hearing.
3 Court is adjourned. Thank you.

4 MR. GEROMETTA: Thank you, Your Honor.

5 MS. MOHSIN: Thank you, Your Honor.

6 (Proceedings concluded, 3:47 p.m.)

7 - - -

8 CERTIFICATION OF REPORTER

9

10 I, Leann S. Lizza, do hereby certify that the above-entitled
11 matter was taken before me at the time and place hereinbefore
12 set forth; that the proceedings were duly recorded by me
13 stenographically and reduced to computer transcription; that
14 this is a true, full and correct transcript of my stenographic
15 notes so taken; and that I am not related to, nor of counsel to
16 either party, nor interested in the event of this cause.

17

18

19 S/Leann S. Lizza 8-2-2023

20 Leann S. Lizza, CSR-3746, RPR, CRR, RMR, RDR Date

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